

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
AT CLARKSBURG**

JOSEPH W. ADAMS,

Plaintiff,

v.

BANK OF AMERICA, N.A. and  
SELECT PORTFOLIO SERVICING, INC. ,  
successor in interest to FAIRBANKS CAPITAL  
CORP.,

Defendants.

Civil Action No. 1:15-cv-86

**BANK OF AMERICA, N.A.'S ANSWER  
AND AFFIRMATIVE DEFENSES**

COMES NOW Defendant Bank of America, N.A. ("BANA"), by and through its undersigned counsel, and responds to the Complaint filed by Plaintiff Joseph W. Adams ("Plaintiff") as follows:

**FIRST DEFENSE**

Defendant responds to the paragraphs of the Complaint as follows:

**INTRODUCTION**

The allegations contained in un-numbered "Introduction" paragraph of the Complaint are a characterization of the lawsuit and, therefore, do not require a response. To the extent that a response is required, BANA denies Plaintiff's characterization of the present claim and denies any specific allegations therein as pled.

## PARTIES

1. BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, and therefore, the allegations in Paragraph 1 of the Complaint are denied.

2.

a) BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations in subparagraph (a) of Paragraph 2 of the Complaint, and, therefore, those allegations are denied.

b) BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations in subparagraph (b) of Paragraph 2 of the Complaint, and, therefore, those allegations are denied.

c) The allegations in subparagraph (c) of Paragraph 2 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions or legal obligations, and, therefore, these allegations are denied.

3. BANA is in the process of investigating the factual allegations contained in Paragraph 3 of the Complaint. BANA admits that it is a national banking association with its principal place of business in North Carolina. However, at this time, BANA is without sufficient information to admit or deny the remaining allegations in Paragraph 3 of the Complaint. Therefore, any allegations not expressly admitted herein are denied at this time.

## STATEMENT OF FACTS

4. BANA admits that, on or about June 21, 1999, Plaintiff executed a deed of trust on

property located at Lot 3 of Spring Meadows Subdivision, Bunker Hill, WV 25413. Any allegation not specifically admitted herein is denied.

5. To the extent that Plaintiff purports to represent the contents of documents, those documents are in writing and speak for themselves, and Plaintiff's characterization of the documents is denied. To the extent that a response is otherwise required, BANA admits that, on or about June 21, 1999, Plaintiff executed a deed of trust on property located at Lot 3 of Spring Meadows Subdivision, Bunker Hill, WV 25413. BANA further admits that the note secured by that deed of trust provided for a principal amount of \$103,200.00, an interest rate of 10.40%, and an initial monthly payment of \$936.30. Any allegations not specifically admitted herein are denied.

6. BANA is in the process of investigating the factual allegations contained in Paragraph 6 of the Complaint. BANA admits that EquiCredit Corporation of America is a subsidiary of BANA. However, at this time, BANA is without sufficient information to admit or deny the remaining allegations in Paragraph 6 of the Complaint. Therefore, any allegations not expressly admitted herein are denied at this time.

7. BANA is in the process of investigating the factual allegations contained in Paragraph 7 of the Complaint. At this time, BANA is without sufficient information to admit or deny the remaining allegations in Paragraph 7 of the Complaint. Therefore, the allegations in Paragraph 7 of the Complaint are denied at this time.

8. BANA is in the process of investigating the factual allegations contained in Paragraph 8 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 8 of the Complaint. Therefore, the allegations in Paragraph 8 of the Complaint are denied at this time.

9. BANA is in the process of investigating the factual allegations contained in Paragraph 9 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 9 of the Complaint. Therefore, the allegations in Paragraph 9 of the Complaint are denied at this time.

10. BANA is in the process of investigating the factual allegations contained in Paragraph 10 of the Complaint and the subparagraphs therein. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 10 of the Complaint and the subparagraphs therein. Therefore, the allegations in Paragraph 10 of the Complaint and the subparagraphs therein are denied at this time.

11. BANA is in the process of investigating the factual allegations contained in Paragraph 11 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 11 of the Complaint. Therefore, the allegations in Paragraph 11 of the Complaint are denied at this time.

12. BANA is in the process of investigating the factual allegations contained in Paragraph 12 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 12 of the Complaint. Therefore, the allegations in Paragraph 12 of the Complaint are denied at this time.

13. BANA is in the process of investigating the factual allegations contained in Paragraph 13 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 13 of the Complaint. Therefore, the allegations in Paragraph 13 of the Complaint are denied at this time.

14. The allegations in Paragraph 14 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient

knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 14 of the Complaint are denied.

15. The allegations in Paragraph 15 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 15 of the Complaint are denied.

16. The allegations in Paragraph 16 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 16 of the Complaint are denied.

17. The allegations in Paragraph 17 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 17 of the Complaint are denied.

18. The allegations in Paragraph 18 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 18 of the Complaint are denied.

19. The allegations in Paragraph 19 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 19 of the Complaint are denied.

20. The allegations in Paragraph 20 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 20 of the Complaint are denied.

21. The allegations in Paragraph 21 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 21 of the Complaint are denied.

22. The allegations in Paragraph 22 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 22 of the Complaint are denied.

23. The allegations in Paragraph 23 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the

truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 23 of the Complaint and in all subparagraphs therein are denied.

24. The allegations in Paragraph 24 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 24 of the Complaint are denied.

25. The allegations in Paragraph 25 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 25 of the Complaint and in all subparagraphs therein are denied.

26. The allegations in Paragraph 26 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 26 of the Complaint are denied.

27. The allegations in Paragraph 27 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 27 of the Complaint are denied.

28. The allegations in Paragraph 28 of the Complaint are not directed at BANA and,

thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 28 of the Complaint are denied.

29. The allegations in Paragraph 29 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 29 of the Complaint and in all subparagraphs therein are denied.

30. The allegations in Paragraph 30 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 30 of the Complaint are denied.

31. The allegations in Paragraph 31 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 31 of the Complaint are denied.

32. The allegations in Paragraph 32 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 32 of the Complaint are



denied.

33. The allegations in Paragraph 33 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 33 of the Complaint and in all subparagraphs therein are denied.

34. The allegations in Paragraph 34 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 34 of the Complaint and in all subparagraphs therein are denied.

35. The allegations in Paragraph 35 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 35 of the Complaint and in all subparagraphs therein are denied.

36. The allegations in Paragraph 36 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 36 of the Complaint and in all subparagraphs therein are denied.

37. The allegations in Paragraph 37 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient

knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 37 of the Complaint are denied.

38. The allegations in Paragraph 38 of the Complaint are denied.

#### CLAIMS FOR RELIEF

##### **COUNT I – ILLEGAL FEES**

39. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 39 of the Complaint.

40. The allegations in Paragraph 40 of the Complaint are denied.

41. The allegations in Paragraph 41 of the Complaint are denied.

42. The allegations in Paragraph 42 of the Complaint are denied.

43. The allegations in Paragraph 44 of the Complaint are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 43 of the Complaint or in any subparagraph therein.

##### **COUNT II – ILLEGAL REFUSAL TO CREDIT PAYMENTS**

44. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 44 of the Complaint.

45. The allegations in Paragraph 45 of the Complaint are denied.

46. The allegations in Paragraph 46 of the Complaint are denied.

47. The allegations in Paragraph 47 of the Complaint are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 47 of the Complaint or in any

subparagraph therein.

**COUNT III – REFUSAL TO PROVIDE ACCOUNT HISTORY (SPS)**

48. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 48 of the Complaint.

49. The allegations in Paragraph 49 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 49 of the Complaint are denied.

50. The allegations in Paragraph 50 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 50 of the Complaint and in all subparagraphs therein are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 50 of the Complaint or in any subparagraph therein.

**COUNTY IV – FAILIURE TO IDENTIFY HOLDER (SPS)**

51. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 51 of the Complaint.

52. The allegations in Paragraph 52 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is

required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 52 of the Complaint and in all subparagraphs therein are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 52 of the Complaint or in any subparagraph therein.

**COUNT V – UNCONSCIONABLE/UNFAIR MEANS TO COLLECT (SPS)**

53. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 53 of the Complaint.

54. The allegations in Paragraph 54 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 54 of the Complaint and in all subparagraphs therein are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 54 of the Complaint or in any subparagraph therein.

**COUNT VI – CONVERSION (SPS)**

55. BANA incorporates by reference the preceding paragraphs of this Answer and thereby admits, denies, or otherwise responds to the incorporated allegations of Paragraph 55 of the Complaint.

56. The allegations in Paragraph 56 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding

any other party's actions, and, therefore, the allegations in Paragraph 56 of the Complaint are denied.

57. The allegations in Paragraph 57 of the Complaint are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 57 of the Complaint are denied.

58. The allegations in Paragraph 58 of the Complaint, and in all subparagraphs therein, are not directed at BANA and, thus, do not require a response. To the extent that a response is required, BANA lacks sufficient knowledge or information at this time to form a belief as to the truth of the allegations regarding any other party's actions, and, therefore, the allegations in Paragraph 58 of the Complaint and in all subparagraphs therein are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 58 of the Complaint or in any subparagraph therein.

#### **COUNT VII – BREACH OF CONTRACT**

59. BANA is in the process of investigating the factual allegations contained in Paragraph 59 of the Complaint. At this time, BANA is without sufficient information to admit or deny the allegations in Paragraph 59 of the Complaint. Therefore, the allegations in Paragraph 59 of the Complaint are denied at this time.

60.

a) Plaintiff purports to represent the contents of documents, those documents are in writing and speak for themselves, and Plaintiff's characterization of the documents in subparagraph (a) of Paragraph 60 of the Complaint is denied.

b) The allegations in subparagraph (b) of Paragraph 60 of the Complaint are denied.

61.

c) Plaintiff purports to represent the contents of documents, those documents are in writing and speak for themselves, and Plaintiff's characterization of the documents in subparagraph (a) of Paragraph 61 of the Complaint is denied.

d) The allegations in subparagraph (b) of Paragraph 61 of the Complaint are denied.

62.

a) Plaintiff purports to represent the contents of documents, those documents are in writing and speak for themselves, and Plaintiff's characterization of the documents in subparagraph (a) of Paragraph 62 of the Complaint is denied.

b) The allegations in subparagraph (b) of Paragraph 62 of the Complaint are denied.

63. The allegations in Paragraph 63 of the Complaint do not constitute factual allegations, but, instead, constitute legal conclusions to which no response is required. To the extent that a response such legal conclusions is required, the allegations in Paragraph 63 of the Complaint are denied.

64. The allegations in Paragraph 64 of the Complaint and in all subparagraphs therein are denied.

65. The allegations in Paragraph 65 of the Complaint are denied.

66. The allegations in Paragraph 66 of the Complaint are denied. Further, BANA denies that Plaintiff is entitled to the relief sought in Paragraph 66 of the Complaint or in any

subparagraph therein.

**GENERAL DENIAL**

Any allegation not specifically admitted herein is denied.

**SECOND DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

**THIRD DEFENSE**

Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations or by application of the doctrine of laches.

**FOURTH DEFENSE**

At all times relevant to the above-captioned action, BANA administered its loan obligations and conducted itself otherwise in conformity with applicable laws and regulations.

**FIFTH DEFENSE**

Plaintiff's Complaint is barred in whole or in part to the extent that BANA's alleged actions were justified.

**SIXTH DEFENSE**

Plaintiff has suffered no damages resulting from any conduct on the part of BANA.

**SEVENTH DEFENSE**

At all times relevant to the above-captioned action, BANA acted in good faith.

**EIGHTH DEFENSE**

Plaintiff failed to mitigate, minimize, or avoid costs associated with Plaintiff's claims.

**NINTH DEFENSE**

Plaintiff was a party to one or more written agreements. BANA asserts the fact of such written agreements, as well as the terms of such written agreements, as a bar to Plaintiff's claims.

**TENTH DEFENSE**

Plaintiff's claims are barred in whole or in part, or are subject to reduction, by the affirmative defenses of accord and satisfaction; estoppel; payment; release; res judicata; unclean hands; failure to mitigate damages; statute of frauds; statutory protection and immunities; and any other matter constituting an affirmative defense which may become apparent through the course of discovery.

**ELEVENTH DEFENSE**

BANA's alleged violations of the WVCCPA, if any, were unintentional as defined in West Virginia Code §46-5-101(8).

**TWELFTH DEFENSE**

BANA is entitled to an award of its reasonable attorneys' fees under W. Va. Code § 46A-5-104.

**THIRTEENTH DEFENSE**

Plaintiffs are not entitled to a recovery of punitive damages against BANA for alleged violations of the WVCCPA. *See One Valley Bank of Oak Hill, Inc., v. Bolen*, 425 S.E.2d 829, 188 W. Va. 687 (1992).

**FOURTEENTH DEFENSE**

Plaintiffs' damage claims and requests for statutory fines and penalties are barred or must be reduced to the extent that they are excessive, disproportionate, or otherwise violative of the United States Constitution, including but not limited to the Due Process clause of the Fourteenth Amendment, *BMW of North Am., Inc. v. Gore*, 517 U.S. 559 (1996), and the Eighth Amendment, *U.S. v. Bajakajian*, 524 U.S. 321 (1998).



**FIFTEENTH DEFENSE**

Plaintiff's claims for equitable relief are not available in this action, are barred by Plaintiff's ratification of the contracts at issue, and are otherwise barred by the existence of adequate remedies at law.

**SIXTEENTH DEFENSE**

Plaintiff's state law claims are preempted by federal law, including but not limited to the National Banking Act and the Fair Debt Collection Practices Act.

**SEVENTEENTH DEFENSE**

BANA reserves the right to add additional affirmative defenses as the case proceeds and the facts and circumstances surrounding the case are revealed during discovery.

**WHEREFORE**, Defendant Bank of America, N.A.. prays the Court to:

1. Order that Plaintiff have and recover nothing;
2. Dismiss Plaintiff's claims against Defendant Bank of America, N.A., *with prejudice*;
3. Tax the costs of this action, including reasonable attorneys' fees as allowed by law, against Plaintiff; and
4. Grant such other relief as it deems just and proper.

This the 16th day of June, 2015.

**BANK OF AMERICA, N.A.**

*By Counsel:*

/s/Victoria L. Wilson

Carrie Goodwin Fenwick (W. Va. Bar No. 7164)

Victoria L. Wilson (W. Va. Bar No. 10607)

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*Attorney for Bank of America, N.A.*

**IN THE UNITED STATES DISTRICT COURT  
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JOSEPH W. ADAMS,

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Civil Action No. 1:15-cv-86

**BANK OF AMERICA, N.A.'S ANSWER  
AND AFFIRMATIVE DEFENSES**

**CERTIFICATE OF SERVICE**

I, Victoria L. Wilson, hereby certify that on June 16, 2015, I electronically filed the foregoing BANK OF AMERICA, N.A.'S ANSWER AND AFFIRMATIVE DEFENSES with the Clerk of Court using the CM/ECF System, which sent notification of such filing to the following counsel of record:

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\_\_\_\_\_  
/s/ Victoria L. Wilson  
Victoria L. Wilson, Esq. (W. Va. Bar No. 10607)